

17A.4 Procedure for adoption of rules.

1. Prior to the adoption, amendment, or repeal of any rule an agency shall:

a. Give notice of its intended action by submitting the notice to the administrative rules coordinator and the administrative code editor. The administrative rules coordinator shall assign an ARC number to each rulemaking document. The administrative code editor shall publish each notice meeting the requirements of this chapter in the Iowa administrative bulletin created pursuant to section 2B.5A. The agency shall also submit a copy of the notice to the chairpersons and ranking members of the appropriate standing committees of the general assembly for additional study. Any notice of intended action shall be published at least thirty-five days in advance of the action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views.

b. Afford all interested persons not less than twenty days to submit data, views, or arguments in writing. If timely requested in writing by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by an agency, or by an association having not less than twenty-five members, the agency must give interested persons an opportunity to make oral presentation. The opportunity for oral presentation must be held at least twenty days after publication of the notice of its time and place in the Iowa administrative bulletin. The agency shall consider fully all written and oral submissions respecting the proposed rule. Within one hundred eighty days following either the notice published according to the provisions of paragraph "a" or within one hundred eighty days after the last date of the oral presentations on the proposed rule, whichever is later, the agency shall adopt a rule pursuant to the rulemaking proceeding or shall terminate the proceeding by publishing notice of termination in the Iowa administrative bulletin.

c. Mail the number of copies of the proposed rule as requested to the state office of a trade or occupational association which has registered its name and address with the agency. The trade or occupational association shall reimburse the agency for the actual cost incurred in providing the copies of the proposed rule under this paragraph. Failure to provide copies as provided in this paragraph shall not be grounds for the invalidation of a rule, unless that failure was deliberate on the part of that agency or the result of gross negligence.

2. An agency shall include in a preamble to each rule it adopts a brief explanation of the principal reasons for its action and, if applicable, a brief explanation of the principal reasons for its failure to provide in that rule for the waiver of the rule in specified situations if no such waiver provision is included in the rule. This explanatory requirement does not apply when the agency adopts a rule that only defines the meaning of a provision of law if the agency does not possess delegated authority to bind the courts to any extent with its definition. In addition, if requested to do so by an interested person, either prior to adoption or within thirty days thereafter, the agency shall issue a concise statement of the principal reasons for and against the rule adopted, incorporating therein the reasons for overruling considerations urged against the rule. This concise statement shall be issued either at the time of the adoption of the rule or within thirty-five days after the agency receives the request.

3. a. When the statute so provides, or with the approval of the administrative rules review committee, if the committee finds good cause that notice and public participation would be unnecessary, impracticable, or contrary to the public interest, the provisions of subsection 1 shall be inapplicable.

b. (1) If the administrative rules review committee by a two-thirds vote, the governor, or the attorney general files with the administrative code editor an objection to the adoption of a rule or portion of a rule pursuant to this subsection, the rule or portion of the rule shall cease to be effective one hundred eighty days after the date the objection was filed.

(2) If the administrative rules review committee files with the administrative code editor an objection to the adoption of a rule or portion of a rule pursuant to this subsection, the administrative rules review committee, by a separate two-thirds vote, may suspend the applicability of the rule or portion of the rule until the rule ceases to be effective under this paragraph "b". The determination to suspend the applicability of the rule or portion of the rule shall be included in the copy of the objection to be forwarded to the agency.

c. If an objection to a rule is filed under this subsection, a copy of the objection, properly dated, shall be forwarded to the agency at the time of filing the objection. In any action contesting a rule or portion of a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to show that the procedures of subsection 1 were impracticable, unnecessary, or contrary to the public interest and that, if a category of rules was involved, the category was very narrowly tailored.

4. Any notice of intended action or rule filed without notice pursuant to subsection 3, which necessitates additional annual expenditures of at least one hundred thousand dollars or combined expenditures of at least five hundred thousand dollars within five years by all affected persons, including the agency itself, shall be accompanied by a fiscal impact statement outlining the expenditures. The agency shall promptly deliver a copy of the statement to the legislative services agency. To the extent feasible, the legislative services agency shall analyze the statement and provide a summary of that analysis to the administrative rules review committee. If the agency has made a good-faith effort to comply with the requirements of this subsection, the rule shall not be invalidated on the ground that the contents of the statement are insufficient or inaccurate.

5. No rule adopted after July 1, 1975, is valid unless adopted in substantial compliance with the above requirements of this section. However, a rule shall be conclusively presumed to have been made in compliance with all of the above procedural requirements of this section if it has not been invalidated on the grounds of noncompliance in a proceeding commenced within two years after its effective date.

6. a. If the administrative rules review committee created by section 17A.8, the governor, or the attorney general finds objection to all or some portion of a proposed or adopted rule because that rule is deemed to be unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency, the committee, governor, or attorney general may, in writing, notify the agency of the objection. In the case of a rule issued under subsection 3, or a rule made effective under section 17A.5, subsection 2, paragraph “b”, the committee, governor, or attorney general may notify the agency of such an objection. The committee, governor, or attorney general shall also file a certified copy of such an objection in the office of the administrative code editor and a notice to the effect that an objection has been filed shall be published in the next issue of the Iowa administrative bulletin and in the Iowa administrative code when that rule is printed in it. The burden of proof shall then be on the agency in any proceeding for judicial review or for enforcement of the rule heard subsequent to the filing to establish that the rule or portion of the rule timely objected to according to the above procedure is not unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to it.

b. If the agency fails to meet the burden of proof prescribed for a rule objected to according to the provisions of paragraph “a”, the court shall declare the rule or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs. Such court costs shall include a reasonable attorney fee and shall be payable by the director of the department of administrative services from the support appropriations of the agency which issued the rule in question.

7. a. Upon the vote of two-thirds of its members the administrative rules review committee may delay the effective date of a rule or portion of a rule seventy days beyond that permitted in section 17A.5, unless the rule was promulgated under section 17A.5, subsection 2, paragraph “b”. If the rule was promulgated under section 17A.5, subsection 2, paragraph “b”, the administrative rules review committee, within thirty-five days of the effective date of the rule and upon the vote of two-thirds of its members, may suspend the applicability of the rule or portion of the rule for seventy days.

b. Notice of an effective date that was delayed under this provision shall be published in the Iowa administrative code and bulletin.

8. The governor may rescind an adopted rule by executive order within seventy days of the rule becoming effective. The governor shall provide a copy of the executive order to the administrative code editor who shall include it in the next publication of the Iowa administrative bulletin.

9. Upon the vote of two-thirds of its members, the administrative rules review committee,

following notice of intended action as provided in subsection 1 and prior to adoption of a rule pursuant to that notice, may suspend further action relating to that notice for seventy days. Notice of a notice of intended action that was suspended under this provision shall be published in the Iowa administrative code and bulletin.

[C66, 71, §17A.6, 17A.7; C73, §17A.6, 17A.7, 17A.17; C75, 77, 79, 81, §17A.4]

83 Acts, ch 142, §9; 86 Acts, ch 1245, §2038; 90 Acts, ch 1266, §32; 91 Acts, ch 258, §17, 18; 98 Acts, ch 1202, §8, 9, 46; 2003 Acts, ch 35, §27, 49; 2003 Acts, ch 145, §286; 2006 Acts, ch 1011, §2; 2008 Acts, ch 1031, §80; 2010 Acts, ch 1031, §52, 58; 2013 Acts, ch 114, §1 – 3

Referred to in §2B.5A, 2B.17, 15.301, 17A.4A, 17A.7, 17A.8, 35A.13, 68B.2, 100B.22, 135C.2, 163.30, 249A.3, 249A.20A, 249A.21, 267.6, 422.11N, 455B.105, 459.301, 479.29, 479B.20, 502.321B, 514B.4A, 519A.4

[P] Rules mandating expenditures by political subdivisions; limitations; fiscal impact statements; §25B.6

[P] Subsection 7, see also §17A.8(9)

[T] Subsections 3 and 7 amended

[T] NEW subsection 9